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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,987	02/22/2002	Ka K. Ho	2204/C25	9964

34845 7590 08/05/2005

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EXAMINER	
TON, DANG T	
ART UNIT	PAPER NUMBER
2666	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/081,987	HO ET AL.	
	Examiner	Art Unit	
	DANG T. TON	2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *3-6,12,14-17 and 19-22* is/are allowed.

6)☒ Claim(s) *1,2,7,8,9,,10,11,and 13* is/are rejected.

7)☒ Claim(s) *18* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsu (6,363,319).

For claims 1,2,and 9, Hsu discloses a system comprising :

a plurality of MPLS devices (see boxes 122 B1 to 122 BN in figure 1B), wherein a plurality of service tiers having different combinations of class of traffic and level of service are established and traffic is separated by at least one MPLS device based upon the plurality of service tiers (see column 1 lines 50-59);

wherein a plurality of label switched path resource classes are reserved for signaling the plurality of service tiers (see column 1 lines 50-59); and

wherein the plurality of MPLS devices comprises a standard MPLS device configured to separate traffic for each service tier (see column 2 lines 50-57 and column 3 lines 1-9).

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7,8,10,11,and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu in view of Elliott et al. (6,614,781).

For claims 7,8,10,11, and 13, Hsu discloses all the subject matter of the claimed invention with the exception of establishing a queue for each service tier and a multiple levels of service for a single class of traffic in a communications network. Elliott et al. from the same or similar fields of endeavor teaches a provision of creating a plurality of queues in order to protect database integrity high, medium and low priority queue (see column 89 lines 36-37). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use establishing a queue for each service tier and a multiple levels of service for a single class of traffic as taught by Elliott et al. in the communications network of Hsu.

The establishing a queue for each service tier and a multiple levels of service for a single class of traffic can be implemented/modified into the network of Hsu by using the central server in figure 1A to perform this scheduling scheme. The motivation for using establishing a queue for each service tier and a multiple levels of service for a single class of traffic as taught by Elliott et al. into the communications network of Hsu being that it protects data integrity in the system and provides a simple and efficient method to select routes in a system of networks.

4. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 3-6,12,14-17, and 19-22 are allowed.

6. Applicant's arguments filed 5/23/2005 have been fully considered but they are not persuasive.

In the remarks of 05/23/2005, applicant traverses the rejection of claims under 35 U.S.C 102 and 103. The traversal is based on ground that references do not teach a mechanism for

simultaneously supporting different classes of traffic as well as different levels of service within a single MPLS network. this argument is not found to be persuasive because applicant's argument is not directed at the claims. The limitation argued by applicant above " simultaneously" is not cited in the claims.

Applicant also argues that the reference does not teach service tiers and separating traffic based on the service tier to which it belongs. This argument is also not found to be persuasive. Applicant's attention is directed at column 1 lines 50-59 wherein it teaches the service tiers and separating traffic based on the tiers.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T TON whose telephone number is 571-272-3171. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 571-272-3174. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DANG TON
PRIMARY EXAMINER

D. Ton